WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO

2003 Senate Bill 22	Senate Substitute Amendment 1
Memo published: **May 16, 2003**	*Contact*: **Ronald Sklansky, Senior Staff Attorney (266-1946)**

2003 Senate Bill 22 contains prohibitions on so-called "pay-to-play" activities. The prohibitions are included under the Code of Ethics for Public Officials and Employees (subch. III of ch. 19, Stats.) and apply to state and local elected officials. Senate Substitute Amendment 1 to Senate Bill 22 makes the bill the equivalent of 2003 Assembly Bill 1, as amended by Assembly Amendments 1 and 2 and Senate Amendment 1.

Enforcement

The bill as introduced includes direct enforcement provisions for a violation of the pay-to-play prohibitions. Under the bill, if within 30 days after receiving a verified complaint alleging a pay-to-play violation the Ethics Board (in cases involving elected state officials) refuses or otherwise fails to authorize an investigation or a district attorney (in cases involving local elected officials) fails to initiate a prosecution, the person making the complaint may bring a lawsuit to recover a forfeiture on behalf of the state.

Senate Substitute Amendment 1 replaces these direct enforcement provisions with provisions that, instead of allowing a complainant directly to bring a lawsuit, offer additional forums for a complainant to seek investigation and prosecution. Under the amendment:

1. If the Ethics Board receives a verified complaint alleging a violation of the pay-to-play prohibitions by a **state** elected official, the board must, within 30 days after receiving the complaint, either authorize an investigation or dismiss the complaint. If the board dismisses the complaint, either without an investigation or following an investigation, the board must notify the complainant in writing. After receiving notification of dismissal, the complainant may then file the complaint with the Attorney General, the district attorney for the county where a violation is alleged to have occurred (or is occurring), or the district attorney for a county adjacent to that county. The Attorney General or district attorney may then investigate the allegations contained in the verified complaint and commence prosecution.

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2. If the district attorney for the county in which a violation of the pay-to-play prohibitions is alleged to have occurred (or is occurring) receives a verified complaint alleging a violation of those provisions by a **local** elected official, the district attorney must, within 30 days after receiving the complaint, either commence an investigation or dismiss the complaint. If the district attorney dismisses the complaint, either without an investigation or following an investigation, the district attorney must notify the complainant in writing. After receiving notification of dismissal, the complainant may then file the complaint with the Attorney General or the district attorney for an adjacent county. The Attorney General or district attorney may then investigate the allegations contained in the complaint and commence prosecution.

Penalties

Currently, an intentional violation of the Code of Ethics for Public Officials and Employees is punishable as a misdemeanor (fine of not less than $100 nor more than $500, imprisonment not more than one year in the county jail, or both; s. 19.58 (1) (a), Stats.). Thus, under the bill as introduced intentional violations of the pay-to-play prohibitions are punishable as a misdemeanor. **Senate Substitute Amendment 1** makes intentional violation of the pay-to-play prohibitions of the bill a Class I felony ($10,000 maximum fine; three years, six months maximum imprisonment; or both).

Coverage of Pay-to-Play Prohibitions

The pay-to-play prohibitions of Senate Bill 22 apply to state public officials "holding an ***elective*** office" and to local public officials "holding an ***elective*** office."

Substitute Amendment 1 expands the coverage of the proposal's pay-to-play prohibitions: (1) in the case of state officials, to include all state public officials covered by the state code of ethics for public officials and candidates for state public office (as defined in s. 19.42 (4), Stats.); and (2) in the case of local officials, to include all local public officials covered by the state code of ethics for local government officials and candidates for local public office (as defined in the amendment).

Thus, the effect of the substitute amendment is to apply the pay-to-play prohibitions not only to state and local elected officials, but to all state and local officials currently covered by the standards of conduct in the State Ethics Code and by the statutory standards of conduct applicable to local officials and to candidates for state and local elective office.

Definition of "Political Party"

The pay-to-play prohibitions of Senate Bill 22 apply to conduct in consideration of, or upon condition that, another person make or refrain from making a political contribution, or provide or refrain from providing a service or other thing of value, to, among others, a "political party." "Political party" is not expressly defined in the bill.

For purposes of the pay-to-play prohibitions, the substitute amendment defines "political party" as "a political organization under whose name individuals who seek elective public office appear on the ballot at any election or any national, state, or local unit or affiliate of that organization." The term is broadly defined and is intended, for example, to cover situations where a political party affiliated with

another state is benefited from a violation of the pay-to-play prohibitions; it is not limited to organizations with Wisconsin affiliations.

Legislative History

Senate Substitute Amendment 1 was introduced, adopted, and recommended for passage, as amended, by the Senate Committee on Education, Ethics, and Elections on May 14, 2003 on a vote of Ayes, 7; Noes, 0.

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